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9 **BEFORE THE**  
10 **BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ANITA ELIZABETH MILES**  
14 **24 Hillgate Place**  
**Aliso Viejo, CA 92656**

15 **Registered Nurse License No. 599012**

16 Respondent.

Case No. **2010-113**  
**ACCUSATION**

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about May 6, 2002, the Board of Registered Nursing issued Registered Nurse  
24 License Number 599012 to Anita Elizabeth Miles (Respondent). The Registered Nurse License  
25 was in full force and effect at all times relevant to the charges brought herein and will expire on  
26 May 31, 2010, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

8. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

1 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
2 without prescription," "Rx only," or words of similar import.

3 (b) Any device that bears the statement: "Caution: federal law restricts this  
4 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
import, the blank to be filled in with the designation of the practitioner licensed to use  
or order use of the device.

5 (c) Any other drug or device that by federal or state law can be lawfully  
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any  
8 controlled substance, except that furnished to a person upon the prescription of a physician,  
9 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

10 10. Section 492 of the Code states:

11 Notwithstanding any other provision of law, successful completion of any  
12 diversion program under the Penal Code, or successful completion of an alcohol and  
13 drug problem assessment program under Article 5 (commencing with section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
14 agency established under Division 2 ([Healing Arts] commencing with Section 500)  
of this code, or any initiative act referred to in that division, from taking disciplinary  
15 action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest.

16 This section shall not be construed to apply to any drug diversion program  
17 operated by any agency established under Division 2 (commencing with Section 500)  
of this code, or any initiative act referred to in that division.

### 18 REGULATORY PROVISIONS

19 11. California Code of Regulations, title 16, section 1444, states:

20 A conviction or act shall be considered to be substantially related to the  
21 qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
22 manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

23 (a) Assaultive or abusive conduct including, but not limited to, those violations  
24 listed in subdivision (d) of Penal Code Section 11160.

25 (b) Failure to comply with any mandatory reporting requirements.

26 (c) Theft, dishonesty, fraud, or deceit.

27 (d) Any conviction or act subject to an order of registration pursuant to Section  
28 290 of the Penal Code.

1 **COST RECOVERY**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **DRUGS**

7 13. Phenobarbital is a Schedule IV controlled substance as designated by Health and  
8 Safety Code section 11057, subdivision (d)(26), and is a dangerous drug pursuant to Business and  
9 Professions Code section 4022.

10 14. Nitroglycerin is a dangerous drug pursuant to Business and Professions Code  
11 section 4022.

12 15. Furosemide is a dangerous drug pursuant to Business and Professions Code  
13 section 4022.

14 16. Methamphetamine is a Schedule II controlled substance as designated by Health  
15 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business  
16 and Professions Code section 4022.

17 **FACTS**

18 17. On or about the early morning hours of June 5, 2007, officers from the Newport  
19 Beach Police Department were working uniformed patrol when they came upon an SUV parked  
20 on a curb and occupied by Respondent, who was sleeping in the backseat. Respondent's  
21 explanation for sleeping in her vehicle was that her roommate was a light sleeper and she didn't  
22 want to wake her up. Respondent was cited. During a check of Respondent's license, it was  
23 discovered that there was a misdemeanor warrant for her failure to appear at a court date for  
24 multiple Vehicle Code violations, including driving on a suspended license, and failure to provide  
25 proof of registration and insurance. A search of Respondent's vehicle incident to arrest revealed  
26 two vials of Phenobarbital (one unopened and one half-full), and a vial each of nitroglycerin,  
27 sodium chloride, and furosemide in a box in the center console. Respondent stated that she  
28 worked in a hospital and that she accidentally left the phenobarbital vials in her pocket when she

1 left from work. Respondent was transported to the Newport Beach jail. During a search of  
2 Respondent's purse, an officer found a folded piece of plastic with a small amount of white  
3 crystalline powder on it. The few granules that could be recovered tested positive for  
4 methamphetamine. Because there was not a useable amount of methamphetamine, Respondent  
5 was not charged with its possession.

6 18. On or about January 16, 2008, in the matter of *People of the State of California vs.*  
7 *Anita Elizabeth Miles, aka Anita Elizabeth Smith, aka Anita Elizabeth Lowe*, in Orange County  
8 Superior Court, case no. 07HF1339, Respondent pled guilty to possession of a controlled  
9 substance (phenobarbital) in violation of Health and Safety Code section 11377, subdivision (a),  
10 and possession of a controlled substance without a prescription, in violation of Business and  
11 Professions Code section 4060. As a result of the plea, the court deferred entry of judgment and  
12 Respondent was ordered to enroll in a drug treatment program pursuant to Penal Code section  
13 1000. On or about August 19, 2008, a bench warrant was issued for Respondent's arrest for  
14 failure to provide proof of drug program completion. At a March 2, 2009 hearing, Respondent's  
15 Penal Code section 1000 diversion was reinstated. Charges were dismissed on July 8, 2009.

#### 16 **FIRST CAUSE FOR DISCIPLINE**

##### 17 **(Unprofessional Conduct – Illegal Possession a Controlled Substance)**

18 19. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
19 Code for unprofessional conduct, within the meaning of section 2762, subdivision (a), in that on  
20 or about June 5, 2007, as described in paragraph 17, above, Respondent was in possession of  
21 controlled substances and dangerous drugs Phenobarbital, nitroglycerin, and furosemide without a  
22 prescription in violation of section 4060 of the Code. Respondent further possessed a testable  
23 quantity of methamphetamine. Such conduct is substantially related to the qualifications,  
24 functions, and duties of a registered nurse.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 20. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
4 Code for unprofessional conduct in that on or about June 5, 2007, Respondent admitted she  
5 removed controlled substances and dangerous drugs from her workplace, as described in  
6 paragraph 17, above. Such conduct is substantially related to the qualifications, functions, and  
7 duties of a registered nurse.

8 **PRAYER**


9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 599012, issued to Anita  
12 Elizabeth Miles;

13 2. Ordering Anita Elizabeth Miles to pay the Board of Registered Nursing the  
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
15 Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.  
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19 DATED: 8/28/09

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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